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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NEW YORK

Case No. 11-47385-ess

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In the Matter of:

OTR MEDIA GROUP, INC.,

Debtor.

- - - - -x

United States Bankruptcy Court

271 Cadman Plaza East

Brooklyn, New York

March 12, 2013

11:51 AM

B E F O R E:

HON. ELIZABETH S. STONG

U.S. BANKRUPTCY JUDGE

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[355] Hearing on NBC Compensation request (RE: related document(s) 323 Affidavit filed by Debtor OTR Media Group, Inc.)

[327] Third Application for Compensation for Goetz Fitzpatrick LLP as Debtors' Counsel

[328] First Application for Compensation for Bryan Cave, LP as Debtors Special Counsel

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THE UNITED STATES DEPARTMENT OF JUSTICE

Attorneys for U.S. Trustee

271 Cadman Plaza East

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Brooklyn, NY 11201

BY: WILLIAM E. CURTIN, ESQ.

Also Present:

Ari Noe, Owner, OTR Media Group

## 1 P R O C E E D I N G S

2 THE CLERK: Numbers 46, 47 and 48 on the calendar.  
3 OTR Media Group here on NBC compensation request, third  
4 application for compensation for Goetz Fitzpatrick, first  
5 application by Bryan Cave.

6 THE COURT: All right. Good morning all. Come on up.  
7 All right. Let's get your appearances on the record. It's  
8 good to see everyone.

9 MR. KUSHNER: Good morning again, Your Honor, Gary  
10 Kushner, Goetz Fitzpatrick for OTR Media, the debtor.

11 THE COURT: All right.

12 MR. HORAN: Good morning, Your Honor. Brian Horan,  
13 New York City Law Department for the city.

14 THE COURT: Thank you, Mr. Horan.

15 MR. DAVIS: Good morning, Your Honor. Wayne Davis of  
16 Tannenbaum Helporn Syracuse & Hirschtritt for Metropolitan  
17 National Bank.

18 MR. CURTIN: William Curtin for the United States  
19 Trustee, Your Honor.

20 MR. CRYSTAL: Good morning, Your Honor. Howard  
21 Crystal, Novack Burnbaum Crystal.

22 MR. HOLZER: Ariel Holzer, Law Office of Ariel S.  
23 Holzer, the debtor, OTR Media.

24 THE COURT: And Ms. Arnold.

25 MS. ARNOLD: Good to see you. Phyllis Arnold, Bryan

1 Cave.

2 THE COURT: All right. Mr. Kushner, let me hear from  
3 you.

4 MR. KUSHNER: Regarding status, Your Honor, I believe  
5 the debtor is current with its operating reports and payment of  
6 the United States Trustee fees continues to make a profit post-  
7 petition. I know it's a separate part of today's calendar but  
8 we have an agreement with Metropolitan National Bank regarding  
9 use of cash collateral and agreed upon budget. We continue to  
10 battle it out with the city in state court and in various other  
11 administrative proceedings outside of this court regarding the  
12 lawfulness of various signs. Ms. Arnold has been involved in  
13 that on a day-to-day basis and perhaps if you want more  
14 specificity as to status of those, I can have Ms. Arnold make  
15 that presentation to Your Honor. But generally speaking, we  
16 are following the Court's rulings going through the various  
17 administrative application permitting processes and then  
18 dealing with the resulting adjudications as appropriate under  
19 the sign laws. And, of course, the city has a different view  
20 but that is my report status.

21 I have spent a great deal of time since the last  
22 hearing trying to be receptive to the various comments, most of  
23 them productive comments, regarding the final disclosure  
24 statement with Your Honor actually conditionally approved the  
25 last time but because of scheduling and various requests

1 accommodating various delays as a result of schedules, I did  
2 receive some more comments last night from the city which I now  
3 have to evaluate. And our intention, obviously, is to get you  
4 a document, file it, and submit to you a final order regarding  
5 the confirmation process, the formal approval of the disclosure  
6 statement and then setting the hearing on disclos -- on  
7 confirmation and various associated dates.

8 I can't -- other than that, we are proceeding towards  
9 a date -- a confirmation date and that's where we're headed in  
10 this case.

11 THE COURT: All right. And I know we have our  
12 February 20 -- excuse me -- April 23rd date set for --

13 MR. KUSHNER: Which is another thing, Your Honor, I  
14 did bring to Mr. Curtin's attention. Even in the most  
15 optimistic light, if I were to drop everything today, get final  
16 approved comments, get you a proposed order, Your Honor would  
17 jump through hoops and sign it with copying and everything,  
18 it's not going to go out till early next week. So that as I  
19 read the Code, you need at least twenty-eight days plus three  
20 days' notice on the hearing on confirmation. There are  
21 probably every bit a good reason to give some more dates for  
22 objections and what have you, filing certifications. So taking  
23 that thought on the calendar having discussed that with Mr.  
24 Curtin, I think it's more appropriate to move that date into,  
25 perhaps, the first or second week of May.



1 THE COURT: That's fine. I'd rather invest a little  
2 bit more time now and have the right record in terms of timing,  
3 service, substance, I think that that's a smart path.

4 MR. KUSHNER: So the April 23rd date is now not going  
5 to be used for confirmation.

6 THE COURT: We'll have to look for a date, in the  
7 window you're describing, sometime in May.

8 All right. Who else would like to be heard on status?

9 MR. HORAN: Just very briefly, Your Honor, on status.  
10 Mr. Kushner's referred to his ongoing compliance efforts in  
11 dealings with DOB and the other administrative agencies  
12 pursuant to the consent order. We learned -- the city learned  
13 yesterday that the debtor's operating a sign at a location, 13  
14 Carmine Street in Manhattan, that under the consent order was a  
15 designated location meaning that Ms. Arnold found that the --  
16 that location could not be brought into compliance and that the  
17 copy had to be removed and any structure had to be removed  
18 because that was no longer a viable sign. DOB conducted an  
19 inspection late last month, February. Found that the debtor is  
20 operating a sign there. We asked that the copy be removed  
21 pursuant to the consent order and if not we intend to move for  
22 a default under the order. I just wanted to advise the Court  
23 of that.

24 THE COURT: Mr. Curtin, how we doing -- Mr. Kushner,  
25 how are we doing on Carmine Street?

1 MR. KUSHNER: I learned of this at 7 o'clock last  
2 night, quarter to 7, and I --

3 THE COURT: So you're on it.

4 MR. KUSHNER: -- so I haven't had a chance to speak  
5 with Mr. Noe this morning regarding that and we will give the  
6 city an appropriate response and certainly abide by the spirit  
7 of the consent order.

8 THE COURT: Glad to hear it.

9 Mr. Curtin, anything to add with respect to status?

10 MR. CURTIN: No, I don't think so, Your Honor.  
11 Nothing else. No.

12 THE COURT: Okay. And from the bank?

13 MR. DAVIS: Thank you, Your Honor. Just got one brief  
14 comment with respect to use of cash collateral.

15 The bank has reviewed during the first week of March  
16 the proposed budget for March and has supplied the debtor with  
17 an order to be submitted to the Court for signature. The  
18 Office of the U.S. Trustee reviewed the order and had no  
19 objection to it.

20 My understanding, the belief was that it was submitted  
21 to the Court last week.

22 MR. KUSHNER: March 8th.

23 THE COURT: We will track this down. If it's not done  
24 already, it'll be done soon. Let's make sure we know where  
25 this is. We'll look. All right. We will follow up. If

1 there's any questions at all, I'll be touch with debtor's  
2 counsel. It's important to get that taken care of and thank  
3 you so much.

4 Anything further on status from any other party? All  
5 right.

6 There are a number of other matters on the calendar.  
7 Mr. Kushner, where do you suggest that we proceed?

8 MR. KUSHNER: Why don't we take the contested fee  
9 application of Novack Burnbaum & Crystal if that's okay with  
10 Your Honor?

11 THE COURT: That's fine. The Novack Burnbaum &  
12 Crystal NBC compensation request.

13 MR. KUSHNER: Yes.

14 THE COURT: This is number 46 on the calendar. Please  
15 proceed.

16 MR. KUSHNER: It is -- I don't have the ECF filing  
17 here, Your Honor. I think it's -- it's got to be more than  
18 that.

19 THE COURT: I'm sorry; it's number 46 on my calen --  
20 on our calendar of today.

21 MR. KUSHNER: Okay. I don't -- yes, I don't know.

22 THE COURT: With respect to the ECF calendar, this  
23 would be -- the order scheduling hearing is number 335 --

24 MR. KUSHNER: Okay.

25 THE COURT: -- on the docket. That's --

1 MR. KUSHNER: Yes. Novack -- may I proceed?

2 THE COURT: Please.

3 MR. KUSHNER: Novack Burnbaum & Crystal was retained  
4 to do essentially litigation work regarding various issues over  
5 the debtor's -- over the lawfulness of the debtor's signs and  
6 pursuant to the protocol that was set up by the Court on a  
7 monthly basis payment to ordinary course professionals such as  
8 Novack Burnbaum Crystal required NBC and others to submit on a  
9 monthly basis a monthly fee statement and then there's a  
10 procedure that's in place pursuant to that order. I'm  
11 scrolling this up.

12 THE COURT: I'm sorry.

13 MR. KUSHNER: I think the court calendar is being --

14 THE COURT: Oh, we have our changeover at the court  
15 reporting. Please continue.

16 MR. KUSHNER: Thank you, Judge.

17 THE COURT: Thank you, Mr. Kushner.

18 MR. KUSHNER: And on February 11th which is within the  
19 time period described by the Court, NBC put in its fee request  
20 for the time it incurred in January of 2013 seeking fees of  
21 \$5,749.73 and reimbursement of expenses of \$70.86. And along  
22 with its application or notice, it submitted its time log and  
23 it's undisputed that NBC's time for the month of January  
24 revolved around the preparation briefing and filing of an  
25 Article 78 proceeding involving the sign at 174 Canal Street.

1           There has been one objection filed by the city.  
2           Essentially, the city's objection states that no compensation  
3           should be awarded to NBC with respect to this fee notice  
4           because it's work in January on the Article 78 contravenes the  
5           stay order and that's the order -- the order I'm referring to  
6           is the order of the Court dated January 9th, 2013 which denied  
7           the debtor's application to reinstate the stay. And NBC's work  
8           also violated, what I'll call, the consent order which was the  
9           consensual order entered on July 19th, 2012 which resolved the  
10          UST's motion to convert or dismiss the case.

11          The city also objects to the payment of fees to NBC  
12          for January on the basis that no attorney should be compensated  
13          for work that it voluntarily discontinued. And in that vein,  
14          what NBC did was after it filed the appropriate application in  
15          state court, it learned that the issue that it was seeking  
16          provisional relief on became moot so the application was  
17          withdrawn.

18          And then the third basis of the objection was that the  
19          consent order restricts altogether the use of NBC in any state  
20          court litigation. The debtor has filed a response to the  
21          city's objection on behalf of NBC essentially addressing each  
22          one of the points that were raised by the consent order -- I'm  
23          sorry; by the city's objection. Specifically, with respect to  
24          the city's contention that the NBC work in January contravened  
25          the stay order and the consent order. The debtor disputes that

1 altogether.

2           Number one, the stay order in its most simplistic form  
3 was the order that was entered by this Court denying the  
4 reinstatement of the automatic stay. It did not in any way  
5 prohibit the debtor from defending itself or exercising its  
6 remedies in connection with the enforcement, the city's  
7 enforcement of the sign laws in state court essentially that if  
8 the city felt that it had a basis to issue a notice of  
9 violation or permit nothing in that stay order prevented the  
10 debtor from defending the claims of the city and defending  
11 against the "allegations" that existed vis-a-vis the awfulness  
12 of the signs.

13           The stay order simply allowed the city without the  
14 existence of the automatic stay to enforce its police powers  
15 and that order makes implicit as never before the Court that  
16 the debtor was supposed to lie down and do nothing to protect  
17 itself in the event it felt it was an appropriate -- the city's  
18 actions were inappropriate under state law. So we think that  
19 that's an argument that does not have any merit.

20           Similarly, the consent order is even more explicit and  
21 expressly reserved all of the debtor's rights to defend itself  
22 against enforcement and to exercise whatever appropriate  
23 remedies it had under state law to basically react to what the  
24 city felt was their right to implement the sign laws. And this  
25 is a process that is adversarial. In state law the -- under

1 state law, the city issues a violation, the debtor has a right  
2 to defend it as the city -- if the city's issuance of a  
3 violation under the debtor's belief is contrary to the sign  
4 laws, the debtor has remedies under the CPLR and otherwise.  
5 And that's really all that this is about.

6 THE COURT: Well, the -- the ability of the debtor to  
7 defend itself is a slightly different question than I think the  
8 question posed by the application which is -- or at a minimum  
9 includes the question whether the services were reasonably  
10 likely to yield a benefit to the estate.

11 MR. KUSHNER: Well, the city is arguing that the  
12 consent order and the stay order either collectively or by  
13 themselves eliminated the debtor's right to exercise the right  
14 to seek a temporary injunction under, for example, CPLR 7805.  
15 That's not, in the debtor's opinion, I think if Your Honor  
16 looks at it, it couldn't poss -- it would be stretching the --  
17 the meaning of those documents that the debtor was basically  
18 walked into state court without arms and legs and couldn't  
19 defend itself. And essentially, what NBC services were in this  
20 case was that the debtor felt that the city's issuance of a  
21 work -- a stop work order did not comply with its own sign  
22 laws. The administrative requirements, I understand, is a  
23 two -- two instances in which a stop work order can be issued.  
24 One is that the debtor is operating an unlawful sign or that  
25 the work that's involved poses a threat to the health, welfare,

1 safety of the public. And in neither of those cases, at least  
2 in the debtor's view, did it exist in that circumstance where a  
3 stop work order was appropriate.

4 NBC was called upon to the debtor to bring the  
5 appropriate proceeding, an Article 78 proceeding, in state  
6 court to adjudicate that issue whether or not it was an  
7 appropriate action on behalf of the city to issue the stop work  
8 order in that instance and also sought provisional relief as it  
9 is allowed to do in an Article 78 proceeding under 7805 of the  
10 CPLR. So under the circumstances, I submit to Your Honor that  
11 nothing before this Court was ever issued or contemplated that  
12 would prevent the debtor from going in and defending itself  
13 against what it perceived to be an excessive improper violation  
14 of the city's enforcement rights. That's why NBC was called  
15 upon.

16 Second issue, Your Honor, was the withdrawal of the  
17 Article 78 and I had a discussion with Mr. Horan, or my office  
18 did last night, and even as a result of that discussion and my  
19 conversations with Mr. Crystal, who's in the courtroom, what  
20 happened here was that after the Article 78 was filed and they  
21 were about to argue it, it was discovered that the issue -- the  
22 factual basis became moot that the sign had already been  
23 painted over and that the only thing that was prudent and  
24 reasonable under the circumstances was for NBC to withdraw the  
25 application because the application was moot as to the TRO



1 request and was not ripe as to the other issue.

2           So I think that NBC shouldn't be penalized for doing  
3 what it -- what a reasonable attorney would have done. It  
4 should be commended for not belaboring the point and argue  
5 what's unarguable. So I don't think that that's a meritorious  
6 objection.

7           And then the consent order, according to the city,  
8 says that NBC couldn't be used at all by the debtor. And I  
9 submit to Your Honor that's not what the express language of  
10 the consent order says.

11           What was contemplated in the consent order was that  
12 there would not be an overlapping of professionals dealing with  
13 various aspects of the sign laws or the process in which the  
14 debtor's signs needed to go through in order to become lawful  
15 or -- and you understand my point.

16           THE COURT: Right.

17           MR. KUSHNER: Bryan Cave undertook under that consent  
18 order a large part of the administrative aspect of that  
19 process. NBC was still contemplated to do various litigation  
20 work that would not be undertaken by Bryan Cave. And the  
21 express language of the consent order says that the debtor  
22 would limit its use of NBC.

23           As an abundance of caution even before NBC was  
24 actually utilized by the debtor, my office contacted Mr. Curtin  
25 of the United States Trustee's office and Mr. Davis at the bank

1 to let him know that NBC was going to come in to do this and  
2 they certainly did not express an objection to doing that. We  
3 didn't ask the city out of practical reasons, Your Honor,  
4 because in this case we're not going to ask the city who we can  
5 retain to engage in a legitimate litigation against the city.  
6 So I mean it's not something that common sense would have  
7 dictated their response.

8           So for all of those reasons, we think that the time  
9 spent by NBC, and Mr. Noe is here, he's agreed that the  
10 services were reasonable and necessary under the circumstances.  
11 It's fair to let the Court know that the debtor does want to  
12 pay these expenses. There's been no objection by -- I mean  
13 these fees and expenses and there's been no objection by other  
14 parties-in-interest so we submit, Your Honor, that the fee  
15 application should be granted and the city's objection be  
16 overruled.

17           THE COURT: All right. Before we hear from the city,  
18 I'd like to hear briefly from Mr. Curtin as to whether your  
19 office as a position on this compensation request.

20           MR. CURTIN: Your Honor -- excuse me -- William Curtin  
21 for the United States Trustee. We don't -- we don't have an  
22 objection and I can confirm that I did have that conversation  
23 with the debtor that the substance -- and just so everyone's  
24 clear I did the -- when -- after the fact when the bill came  
25 in, I did have a conversation with Mr. Climan(ph.) and also and

1 told him all this so this is all -- obviously, nothing was  
2 hidden, at least from my end.

3 The issue was whether -- did the debtor acknowledge  
4 that the consent order said -- it says what it says. It says  
5 "limit the use." It doesn't say they can't use them it says  
6 "limit the use." And I think largely to this point they have  
7 limited the use but the argument was that it would cost one  
8 amount for Bryan Cave to do it and a much smaller amount of NBC  
9 to do this particular -- this particular action. So I said it  
10 makes sense to me. Reserving all rights, obviously, to object  
11 to the fees but not objecting to the actual use of the NBC for  
12 this action. So bottom line is, we did have the conversation.  
13 It was certainly not done surreptitiously or anything like that  
14 and we don't have an objection with the application.

15 THE COURT: I'd like your consent. And I'll just say  
16 at the outset that the dynamics of taking a position with  
17 respect to an entity retaining counsel to be adverse to your  
18 unusual dynamics but they inhere in the structure of this case.

19 MR. HORAN: Your Honor, Mr. Kushner said that the  
20 issue raised in the Article 78 petition was -- became moot and  
21 once NBC realized that it decided to withdraw the petition.  
22 That's not really the case or perhaps it's just a very generous  
23 way of describing what happened. In fact, the Article 78  
24 petition was false, contained flat out misstatements.

25 Paragraph 3, and this is attached as Exhibit 1 to our

1 objection, paragraph 3 states that "The stop work order had the  
2 effect of prohibiting OTR from performing work necessary to  
3 replace the existing painted sign with a new painted sign."

4 The next paragraph it states, "The stop work order is  
5 causing OTR irreparable harm by preventing it from discharging  
6 its obligations to its clients to post advertising signage at  
7 the premises." In fact, the same day that the -- that the RJJ  
8 was filed along with this petition, OTR installed the sign that  
9 it claimed it couldn't install. So the entire predicate for  
10 the Article 78 turns out not to be correct.

11 The Article 78 was nothing more than an effort by OTR  
12 to shield its violation of the stop work order. It wanted to  
13 put the sign up, the stop work order said it couldn't put the  
14 sign up and it did so anyway and then sought protection in  
15 state court. And the timeframe for this is important.

16 DOB issued the stop work order in September 2012. OTR  
17 didn't enter the agreement to install the sign until October,  
18 the following -- over a month later. And it wasn't until  
19 February, four months after the issuance of the stop work  
20 order, that OTR, in fact, installed the sign and then ran to  
21 state court and sought protection so that it could leave the  
22 sign up without fear of being in violation of a stop work order  
23 or receiving notices of violation.

24 Indeed, the reply that the debtor submitted on this  
25 fee application continues to make misstatements to the courts.

1 The reply states that the debtor entered the agreement in  
2 September. That's not the case. It entered into the agreement  
3 to install the sign in October, over a month after the stop  
4 work order was issued. So what we have here is another  
5 instance of OTR, this is a year's long campaign that it's been  
6 engaged in, to shield itself from enforcement by the city. It  
7 sought this relief in state court only after this bankruptcy  
8 court said that the city could continue enforcing the sign  
9 laws.

10 OTR had entered into this agreement in October. In  
11 December, it came to this Court and asked for relief -- asked  
12 the Court to reinstitute the automatic stay. This Court denied  
13 that motion in January and then OTR installed the sign anyway  
14 and asked the state court to protect it.

15 And again, this is -- this was the third order of this  
16 Court finding that the city did enforce the sign laws.

17 On top of those orders, finding that there was no stay  
18 on the city's enforcement, there's the consent order. And this  
19 Article 78 petition flies in the face of the consent order  
20 which set up a process whereby the debtor agreed to make  
21 submissions to the Department of Buildings, have DOB render  
22 determinations, and if necessary and appropriate, take appeals  
23 from those determinations.

24 The second part of the consent order, importantly,  
25 specifically reserved the city's right to issue NOVs for

1 ongoing violations. And what this Article 78 sought to do was  
2 not only short-circuit the regulatory process of normalizing  
3 the signs through DOB, but also to stay the issuance of NOV's  
4 for the violation that OTR decided to create when it installed  
5 the sign.

6 THE COURT: In the absence of all the other agreements  
7 and proceedings and orders, would this Article 78 proceeding be  
8 the kind of thing that a sign enterprise like OTR might bring  
9 in the ordinary course of its business?

10 MR. HORAN: Your Honor, I can't speak to the ordinary  
11 course of this typical sign business; I'm not familiar enough.  
12 But it seems to me that when a stop work order is issued with  
13 an intent to revoke a permit, the appropriate thing to do is to  
14 abide by the stop work order and then challenge the permit  
15 revocation. I mean this permit has been revoked. It was  
16 revoked in February. It was revoked right around the time when  
17 this Article 78 was filed. And I understand from counsel, told  
18 me today, that that decision by DOB to revoke the permit is now  
19 on appeal at BSA. That's the appropriate process. That's the  
20 process that was envisioned in the consent order. What the  
21 consent order did not envision is OTR is disregarding entirely  
22 the determinations of the Department of Buildings, installing  
23 an illegal sign and then going to state court after this Court  
24 didn't give it the relief it wanted, going to state court to  
25 protect that after-the-fact violation.

1           The city's position is not that NBC cannot be used in  
2 litigation. We certainly read the consent order. The plain  
3 language says that NBC's use should be limited. What that  
4 means to us is that OTR is not entitled to continue its  
5 campaign of endless litigation using an army of law firms to  
6 try to shield itself from enforcement by the city. And this  
7 Article 78 is an example of just that and that's why fees  
8 should not be awarded because this Article 78 given that it was  
9 predicated on flat out falsehoods had no reasonable likelihood  
10 of benefitting the debtor -- the estate.

11           THE COURT: And what is the status of the Article 78?

12           MR. HORAN: It's been withdrawn. It was -- as soon as  
13 the -- as it turned out that the contract was entered into only  
14 after the stop work order was issued, number one. And number  
15 two that the sign had already been installed in violation of  
16 the stop work order, the debtor's counsel voluntarily withdrew  
17 the petition.

18           THE COURT: Would others like to be heard on this?

19           MR. HORAN: Thank you, Your Honor.

20           THE COURT: Thank you very much.

21           No one's noted it in the record so I will just for a  
22 sense of proportionality, it does seem that the amount of money  
23 that we're looking at here is \$5,749.73 and \$70.86 in expenses  
24 an amount that is probably already overcome by the costs the  
25 parties have incurred in filing these papers and arguing. Just

1 a bit of a reality check, my friends.

2 Mr. Kushner, let me hear your reply.

3 MR. KUSHNER: Well, in response to that last  
4 observation, Judge --

5 THE COURT: Please correct me if I'm wrong but this --

6 MR. HORAN: -- there's certainly been time and expense  
7 spent in responding to it. Certainly, if Mr. Crystal would  
8 have done it himself I don't think he would have sought  
9 compensation but that's not the protocol. I'm debtor's  
10 counsel. I make the application. He would be a witness. But  
11 honor be thy name, Judge, what's really at the root of this is  
12 NBC is a well-respected highly capable law firm dealing  
13 significantly in its practice in the sign law issues.

14 THE COURT: Um-hum.

15 MR. KUSHNER: So it would be a disincentive for NBC  
16 counsel, debtor's counsel of choice in these matters, not to  
17 work any further. The easiest way to do that is to knock them  
18 out on their face. So I'm faced in the position as a  
19 reasonable lawyer, what they would do under the circumstances  
20 to say fight for those fees, the debtor wants to pay them, the  
21 debtor wants to use these lawyers. NBC will not work if it  
22 can't get paid in a bankruptcy case and the city -- the debtor  
23 would have lost its counsel of choice and the city would have  
24 won a small part of this ongoing battle and that is it's  
25 knocked out a competent adversary. That's what's really behind



1 the response, Judge.

2 THE COURT: And we do have the statement in the Arnold  
3 declaration that NBC's experience and expertise in  
4 litigation -- well, reflected in her view that NBC is in the  
5 best position -- that language is quoted in your submission in  
6 paragraph 3 to page 7 -- the best position to proceed -- I take  
7 the point and in all events from this seat in the courtroom,  
8 the dollars are not the issue and the same point of good case  
9 management, I would be remiss if not to note them.

10 The question framed by this application is whether  
11 this -- whether the applicable criteria for allowing an  
12 expense, I have a net here, and those are not necessarily a  
13 hindsight -- those do not invite necessarily a hindsight  
14 measure although hindsight -- a tiny bit of hindsight may be  
15 inevitable. The question really should be whether at the time  
16 the expenses incurred was it reasonably likely that the expense  
17 would benefit the estate, was it necessary to the  
18 administration of the estate.

19 I appreciate that you have focused on the  
20 reasonableness or not of the outcome, whatever, of that Article  
21 78 proceeding and whether it complied with -- was consistent  
22 with the text or the spirit of various other orders in this  
23 case including a consent order and the path we followed to get  
24 to this point a difficult to clear but ultimately productive  
25 path for all concerned, I think. I'd like if anyone else with

1 particular focus on that question of the standard whether these  
2 expenses were reasonable and likely to benefit the estate as  
3 assessed at the time they were incurred. Mr. Kushner, also  
4 notes that I have counsel standing with an interest in  
5 speaking.

6 MR. KUSHNER: Well, I would --

7 THE COURT: I'll hear from whoever would like to go --

8 UNIDENTIFIED SPEAKER: I would --

9 MR. KUSHNER: -- be brief, Your Honor. You have a  
10 full courtroom.

11 THE COURT: Thank you.

12 MR. KUSHNER: Your Honor has, in fact, put the finger  
13 on the appropriate standard.

14 What should be analyzed here was what was in Mr.  
15 Crystal's mind when he was asked to do these things. What did  
16 he do? He was told he believed that under applicable state law  
17 after consultation with my office's bankruptcy counsel that he  
18 had the right to go ahead and the duty to go ahead to file the  
19 Article 78 to challenge the lawfulness of the city's work stop  
20 order.

21 The work stop order was challenged on the basis that  
22 at the time that the Article 78 was filed and prepared, there  
23 had been no permit revocation which meant that the lawfulness  
24 of the sign or the sign had not been declared "unlawful" and  
25 secondarily that there was no indication that whatever work was

1 to be done in terms of painting was a threat to the general  
2 welfare of the citizens of New York.

3 He did not know at the time, Mr. -- I'm proffering but  
4 Mr. Crystal is here, he will tell you that he did not know at  
5 the time that the same day in an ordinary type of way not to  
6 cast any culpability on the debtor's actions that the sign  
7 hanger had gone through and changed the sign already. Once he  
8 learned about that, that rendered one aspect of the Article 78,  
9 that is the immediate request for provisional relief,  
10 inappropriate to continue, and he discontinued it. And he had  
11 no other basis at the time that he discontinued it to go  
12 forward with the Article 78 altogether because the permit  
13 revocation did not follow until days later. So as it stands  
14 now, the debtor does have a viable claim to challenge the work  
15 stop order or the lawfulness of the permit revocation and  
16 that's a story for the future.

17 But looking at this case in a vacuum, at the time that  
18 Mr. Crystal was asked to do the work, there was a legitimate  
19 basis under state law to seek the relief that the debtor  
20 required under the circumstances. The timeline meant nothing,  
21 it means nothing, it's a red herring. I stand by my papers.  
22 At the time that Mr. Crystal put pen to paper, he believed that  
23 the debtor had an absolute right to file the Article 78  
24 proceeding and upon learning that what he had done really was  
25 improper under the circumstances and that the relief could not

1 be obtained, he also did the reasonable thing.

2 Judging that under those conditions, under those  
3 undisputed facts, he belong -- he deserved compensation in this  
4 case.

5 THE COURT: Mr. Horan, would you like to reply --  
6 would you like to respond?

7 MR. HORAN: Yes. Yes, Your Honor. The question is  
8 not what was in Mr. Crystal's head when he was preparing these  
9 papers, the question is whether this Article 78 was likely to  
10 benefit the estate. And the answer to that question is that it  
11 was not because -- for two reasons. First of all, and I think  
12 Mr. Kushner was a little bit loose with the facts, this sign  
13 was illegal when it was installed. It was installed in  
14 violation of the stop work order. The debtor knew or should  
15 have known then and, therefore, the debtor should never have  
16 asked Mr. Crystal to bring the Article 78.

17 And secondly, the -- there was no irreparable harm  
18 which was the entire basis for the -- for the petition, no  
19 irreparable harm because the sign was already installed and the  
20 debtor was complying with its contractual obligations, albeit  
21 in violation of the law.

22 This Article 78 was withdrawn because there was no  
23 basis for it. It should never have been filed in the first  
24 place. And there should be no fees paid from the estate for  
25 preparing and filing the Article 78. And just to be clear,

1 this has nothing to do, this is not in any way a personal  
2 attack on Mr. Crystal. The city does not object to the use of  
3 NBC in appropriate circumstances. But there should be no fees  
4 paid for an improper factually false court filing.

5 MR. KUSHNER: Just to be clear, Your Honor, if you  
6 look at the time records in the application for Mr. Crystal,  
7 they were performed in January at the time that the sign had  
8 not been replaced. The sign was replaced in February.  
9 February 1st, I believe, was the date that the sign was  
10 replaced. Okay. By that time, the application had been filed  
11 and the need for it to go further was mooted. Mr. Crystal did  
12 nothing wrong and the suggestion by the city otherwise is  
13 alarming.

14 THE COURT: All right. Would anyone else like to be  
15 heard?

16 MR. NOE: Just briefly, also, also on the record  
17 timeline.

18 The main issue that we had --

19 THE COURT: Go get your microphone before you speak.  
20 It'll make a better record.

21 MR. NOE: I apologize, Your Honor.

22 THE COURT: Thank you, very much.

23 MR. NOE: All right. The main issues that we had  
24 which generated a need for this lawsuit was the fact that the  
25 property owner, because of the stop work order, did not want

1 the sign to be replaced and that's created -- despite the  
2 reference to a timeline, that created the need for this  
3 litigation in order -- the stop work order itself was improper  
4 in terms of -- as far as a delta painted sign which caused no  
5 inherent immediate risk or danger, this was part of the  
6 arguments, and we went through the proper channels beforehand  
7 also which the city left out. Phyllis Arnold did contact the  
8 Department of Buildings and asked them to lift the stop work  
9 order because it was improper. Once we learnt that they would  
10 not do that, that caused the need for a lawsuit which was then  
11 mooted by the fact that the landlord relented and allowed us to  
12 place a sign there. And that's when it became moot. That's  
13 all I have to say on the timeline.

14 THE COURT: All right. Anything further from any  
15 party?

16 I appreciate the arguments that both sides have made.  
17 To me it's most important to come back -- to consider the  
18 context in the bigger picture here but then come back to the  
19 very specific question that is framed by this professional  
20 compensation request as opposed to the Article 78 and all of  
21 the orders that provide the context and background to the  
22 party's arguments, also of interest to the Court. And I think  
23 that question is most importantly at the time that the work was  
24 done on two days, January 30th, and January 31st in the context  
25 that it was done was it an appropriate enterprise by this

1 professional on behalf of the debtor, was there a sensible and  
2 a reasonable basis to proceed with the work, and I appreciate  
3 that from the different perspectives you reached different  
4 conclusions in good faith. But from this perspective, I'm  
5 inclined to conclude that the answer is yes.

6 While I take note of the fact that the facts were very  
7 dynamic, quite dynamic, the situation was dynamic, I think it  
8 would be a mistake to use hindsight or even the question of  
9 whether the matter that was brought you, the Article 78  
10 proceeding that was brought, turned out to be necessary to  
11 continue to conclusion. I would be reluctant to establish a  
12 standard that somehow created a disincentive appropriately to  
13 bring but then appropriately to withdraw a case because somehow  
14 you have to stand your ground to get paid eventually.

15 I'm also mindful here as in so many other situations  
16 that in a reorganization professionals do take a lot of risks  
17 but the risks should be bounded by the framework that does  
18 permit them to have an award of compensation and to be paid  
19 that compensation as if amendments permitted under the Code and  
20 the rules and subject to notice in all of the proceedings that  
21 we've had here.

22 So it seems to me that at least in a general way the  
23 objections that have been made more appropriately -- first of  
24 all, are a good caution as to how decisions should be made as  
25 to the work that is going to be in the interest of the debtor

1 whether the services are necessary to the administration  
2 however beneficial of the time at which the service was  
3 rendered toward the completion of the case under this Title 11  
4 and Chapter 11 -- I'm citing the Korea Chosun Daily Times case  
5 from 337 B.R. 758 at 765 through 66 a case familiar to some in  
6 this courtroom including myself having written that decision, I  
7 think the point the city has made are good reminders as to the  
8 context of how that decision should be made but not sufficient  
9 in this case to overcome the showing that the debtor has made  
10 with respect to the time and circumstances, a situation that  
11 was present when these fees were incurred.

12           That's a separate question and I need input from the  
13 parties on this as to when and how these fees could actually be  
14 paid. And I realize that's often a different question with an  
15 administrative cost, administrative expense. Mr. Kushner, Mr.  
16 Curtin, can I hear from you on that?

17           MR. KUSHNER: Yes, Your Honor. I happen to know by my  
18 own directing party with Michael Eisenberg who is the debtor's  
19 controller that there is a reserve set aside for the payment of  
20 professionals including the two applications that are before  
21 you on this calendar that have yet to argue today. So the  
22 money's there. It's been budgeted all along. Again, this is a  
23 business model that relies heavily on professionals. The cash  
24 collateral orders that have been negotiated and submitted for  
25 approval on the ones that have been approved contain what I



1 would call hefty allowances for professionals out of need and  
2 the money's there.

3 This money, certainly, is not going to in any way  
4 interfere with the operations of the debtor. And again, I  
5 didn't ask it specifically as to Mr. Crystal's application but  
6 more so in the context of the larger applications that are also  
7 before you today.

8 THE COURT: Well, and there is a question of the  
9 holdback that would be consistent with the terms of the  
10 ordinary course professionals.

11 MR. KUSHNER: There's an eighty percent --

12 THE COURT: Eighty percent. I do want to note, and I  
13 said this from time to time in this case, though not terribly  
14 recently, it bears repeating, a business model founded on  
15 litigation with the city is not a business model that seems  
16 likely to me to lead to a successful reorganization of this  
17 enterprise. And moving this enterprise onto a different track  
18 has been, perhaps, the single most significant component over  
19 this reorganization effort since this case was filed back in  
20 2011. So yes, professionals are important.

21 Is litigation a business strategy? I hope not. But  
22 then that's not --

23 MR. KUSHNER: The --

24 THE COURT: -- for me to set the business strategy, in  
25 the case.

1 MR. KUSHNER: -- the lion's share of the fees in this  
2 case have been dedicated towards the need for administrative  
3 compliance putting forth the effort through lawyers of getting  
4 the signs approved, permits approved, that's certainly Ms.  
5 Arnold's -- the bulk of Ms. Arnold's work and my work is done  
6 as the quarterback of the Chapter 11 case. So I don't think  
7 it's as much litigation as you think, Your Honor, but I  
8 understand your point.

9 THE COURT: All right. I'm reminded of the -- of the  
10 need to emphasize that, perhaps, by your observation that this  
11 is a reorganization driven by the retention of professionals.

12 All right. Mr. Curtin, with respect to payment, let  
13 me hear from you. Any objection to proceeding along the lines  
14 set forth?

15 MR. CURTIN: Your Honor, with respect to this  
16 application, it's -- as you mentioned, I think with the  
17 holdback it comes out to, what, 4 --

18 THE COURT: Four thousand dollars.

19 MR. CURTIN: -- 4,000. They can afford it. The  
20 money's there.

21 THE COURT: Right. For all the reasons reflected in  
22 the record, noting the merits of the arguments that came from  
23 both sides and the lessons that I trust each and all of you is  
24 drawing from all of them, the motion will be granted as  
25 reflected in the record. Please submit an appropriate proposed

1 order. If it's appropriate, just send it by Mr. Curtin's  
2 office for consent as to form since investments earn  
3 compensation --

4 MR. CURTIN: Thanks, Your Honor.

5 THE COURT: -- and he won't ask you to do that.

6 All right. And I will say in deciding this matter  
7 today on this record, I am motivated in significant part by the  
8 desire to keep a -- to have a single hearing in a matter that  
9 concerns only a few thousand dollars, it's real money to the  
10 lawyers who would like to be paid. I'm not saying I'd want  
11 bigger fee applications but I don't -- I don't want you to  
12 assume that it's a harbinger of how we're going to proceed with  
13 respect to the other applications.

14 Where would you like to go next, Mr. Curtin -- I'm  
15 sorry; Mr. Kushner. Very -- Mr. Curtin, where would you like  
16 to go next? I apologize for my misspeaking again.

17 MR. CURTIN: Well, if you want me to answer.

18 THE COURT: Well, I'm always interested to hear the  
19 position of your office. But --

20 MR. KUSHNER: I think --

21 THE COURT: -- I'm wondering if it's appropriate to  
22 give the parties --

23 MR. KUSHNER: -- what's left are two fee applications,  
24 Your Honor; one for Goetz Fitzpatrick and one for Bryan Cave.  
25 Do you want to take those together or do you want to take those

1 separately?

2 THE COURT: Well --

3 MR. KUSHNER: They essentially involve the same  
4 issues.

5 MR. CURTIN: Well, I think -- if may, I think the  
6 Bryan Cave one is settled.

7 THE COURT: Let's start with the Bryan Cave one,  
8 please. Mr. Curtin?

9 MR. KUSHNER: Was --

10 THE COURT: Mr. Kushner, you'll let me hear the -- I  
11 know there have been objections to those as well. I hear -- as  
12 to counsel whose applications have been determined, you're  
13 welcome to stay but your free to go.

14 UNIDENTIFIED SPEAKER: Thank you.

15 THE COURT: You may be excused. Please proceed.

16 MR. KUSHNER: Can I just consult with Ms. Arnold --

17 THE COURT: Yes, you may.

18 MR. KUSHNER: -- because this is -- okay, so dealing  
19 with Bryan Cave, Your Honor, Bryan Cave has submitted its first  
20 interim fee application seeking fees in the amount of  
21 \$156,422.25 and reimbursement of disbursements in the amount of  
22 \$1,190.11 for a total request of \$157,612.36. There was one  
23 objection filed by the Office of the United States Trustee  
24 which I understand from Ms. Arnold has been now resolved with  
25 the agreement between -- with the Bryan Cave law firm to accept

1 a sixty percent allowance and forty percent holdback on fees  
2 and a hundred percent on disbursements. I don't have the  
3 numbers because I just learned about it right now.

4 THE COURT: All right. Mr. Curtin, let me hear from  
5 you. I have your objection; your office's objection.  
6 Identifies some important issues. It sounds like they've been  
7 resolved with a productive compromise and I'm grateful to hear  
8 that. Let me hear from you.

9 MR. CURTIN: Thank you, Your Honor. And I do want to  
10 put something on the record.

11 I think this -- both objections, the objection to  
12 Goetz Fitzpatrick objection and the Bryan Cave objection. As I  
13 tried to make clear both in the papers and in subsequent  
14 conversations were really based upon timing and economics. The  
15 timing being that we're close to confirmation and the economics  
16 being that from our point of view, such a large expense at this  
17 point in the case wouldn't be a prudent way to proceed. But  
18 since we're on Bryan Cave, I think it's clear that Bryan Cave  
19 and Ms. Arnold's services in this case have brought some order  
20 to what was a rather chaotic situation. So the objection  
21 really is not -- is not a reflection on the services that she  
22 and her firm rendered. It's purely an economic/timing issue.  
23 So for those reasons, we had a conversation before the hearing  
24 and agreed that a sixty percent allowance at this point with  
25 all rights reserved on both sides to the final hearing to seek

1 the rest and then whatever -- whatever else is incurred between  
2 when this application ends and confirmation. So I think it  
3 makes sense, I think it's something that the debtor can afford  
4 to pay out without leaving it with a very small amount of money  
5 in the bank. And I think that based upon the circumstances in  
6 the case and in the interest of case management, it's a prudent  
7 way to proceed at this point.

8 THE COURT: All right. Would anyone else like to be  
9 heard? No response. I note also that the work done by Ms.  
10 Arnold and by the firm has been significant in the case and I  
11 appreciate the points made to put in context the objection that  
12 the Office of the United States Trustee focused on the issues  
13 as you've indicated.

14 For all the reasons reflected in the record, the  
15 application, the compensation for Bryan Cave as modified  
16 consensually on the record will be granted. I'll ask you to  
17 submit a proposed order as reflected in the record and again  
18 with review as to form by Mr. Curtin's office. All right? Mr.  
19 Kushner.

20 MR. KUSHNER: Yes, that brings us to Goetz Fitz's --  
21 Goetz Fitzpatrick's, rather, fee application.

22 THE COURT: Yes.

23 MR. KUSHNER: This is the third interim fee  
24 application of the firm as debtor's counsel. It covers the  
25 period July 1st, 2012 for the seven month period ending January

1 31st, 2013. It seeks 164,950 in fees and \$1,008.25 in  
2 reimbursement of disbursements for a total request of  
3 \$165,958.25. The debtor has had -- the counsel has had one  
4 objection by the Office of the United States Trustee and there  
5 was a reply filed by -- by the applicants. And, again, I  
6 learned of the sixty percent offer this morning and I don't  
7 think that it's unfair or fair but Goetz Fitzpatrick does have  
8 a little bit of a different situation than -- than Bryan Cave.

9 Again, this is the third application. There are prior  
10 holdbacks in this case of a substantial amount of money. I  
11 believe it's about 65,000 dollars. Even a twenty percent  
12 reduction holdback here would result in production of over a  
13 hundred thousand dollars for fees.

14 I do appreciate very much the role of Mr. Curtin  
15 personally and the Office of the United States Trustee. I put  
16 in what I felt was a legitimate reply in dealing with the law.  
17 And I do respect his point about -- about the payment concern,  
18 about the monies that are available to pay the expenses of this  
19 estate at this time.

20 As I said to the Court before in response to another  
21 question, those monies are set aside and I think that a forty  
22 percent reduction is extreme at this point. I'm certainly  
23 willing to listen to a more reasonable number. There's been no  
24 challenge at all to the reasonableness of our fees. As I  
25 understand the main convention of the United States Trustee is

1 that according to his analysis, the estate can't pay for it.  
2 Our firm has never and I have never put a debtor in the  
3 situation of making sure that our fees are paid over the -- at  
4 the expense of any other creditor of this case. There has been  
5 not one creditor come to this court in the course of this  
6 entire Chapter 11 case that's complained that they haven't been  
7 paid. Again, these monies are set aside. The payment of  
8 allowed fees at the appropriate time as cash flow permits will  
9 not interfere with the operations of this debtor.

10 And again, I think that the forty percent haircut  
11 given the prior holdbacks and what have you, doesn't comport  
12 with the law. It doesn't comport with the facts of this case.  
13 These expenses have been budgeted, approved by the lender and I  
14 submit that, Your Honor, that a different -- slightly  
15 different, not a greater difference, I'm not asking for a  
16 hundred percent of the fees, I'm certainly willing to bend, but  
17 I don't think that forty percent is appropriate.

18 THE COURT: Mr. Kushner, I take all the points that  
19 you make and I appreciate them. I think this is one of the  
20 matters that comes rather directly within the discretion of the  
21 Court within a reasonable range. I'd like to hear from others.  
22 I only have submissions, of course, from the United States  
23 Trustee. Any other responses? No response.

24 Here's my question for you. As I do my best to make a  
25 sensible determination here, why isn't the percentage that was



1 appropriate in the Bryan Cave situation not appropriate here?

2 MR. KUSHNER: I guess they're -- they've made -- you'd  
3 have to ask Bryan Cave why -- why -- I think what I'm hearing  
4 is that, from Ms. Arnold, was that there was no prior holdback,  
5 that this is the first application. And from the fact that  
6 this is something that they're prepared to do business-wise,  
7 maybe they have a bigger firm in terms of the numbers of  
8 revenues, we have a thirty-man firm. If Your Honor were to  
9 just award these fees at a 20 percent level which has been  
10 protocol in this case so far, and again, it's not something  
11 that I've said is the number that needs to be paid here, I'm  
12 still out a hundred percent -- over 100,000 dollars of having  
13 financed that work throughout a year-and-a-half worth of work.  
14 I think that that puts us on a different track than special  
15 counsel.

16 THE COURT: Right. How much has been paid?

17 MR. KUSHNER: I can --

18 THE COURT: If the holdback has been -- how much is  
19 the holdback up to at this point?

20 MR. KUSHNER: There's been a substantial amount paid.  
21 I can give you some --

22 THE COURT: There has been a substantial amount paid  
23 and I think those numbers are part of the equation. Mr.  
24 Curtin, I think had a reply. Why I take it and if memory  
25 serves, we are taking out of the holdback from twenty to forty

1 percent. What testifies that difference at this stage?

2 MR. CURTIN: Well, there's a couple things, Your  
3 Honor. One is the fact that we are very, very close to  
4 confirmation and I think that clearly that the case law and the  
5 Code is consistent in the observation that the final -- the  
6 final fee application is the best time to consider fee  
7 application. Certainly, interims are part of the process and  
8 we're not disputing that, obviously. There have been several  
9 interim orders already.

10 But the bigger issue, as I mentioned on the -- in the  
11 context of the Bryan Cave application is this debtor has to get  
12 to confirmation and this debtor has to have somewhat of a  
13 cushion, a cash cushion, an operational cushion in order to --  
14 confirmation is not -- is not going to be easy here and for it  
15 to be possible at all, we got to do everything we can to have  
16 this debtor in a sound financial position come a month-and-a-  
17 half from now. So that's where the issue of the larger holdback  
18 comes from.

19 And I think the holdback itself is somewhat --  
20 somewhat of a red herring because in some cases, Your Honor,  
21 we'll ask for a larger holdback because, say, looking at the  
22 applications, we anticipate having objections to more than  
23 twenty percent of the fees so we don't want to get into a  
24 disgorgement situation. That's not the case here. It's more a  
25 case of economically how much -- from our point of view,

1 understanding it's only one point of view, but from our point  
2 of view, how much prudently should go out the door at this  
3 point. And it's a balancing test.

4 Obviously, the -- no one's disputing that Mr.  
5 Kushner's firm's done work in this case. Done a lot of work in  
6 the case. And that's got to be balanced against what -- we're  
7 not up here saying that they shouldn't get anything. We got to  
8 balance that against what is in from our point of view in the  
9 interest of this debtor at this point in time, a month-and-a-  
10 half away from what's going to be a challenging confirmation  
11 hearing. So that's where -- how we arrived at the number  
12 and --

13 THE COURT: Close to the end of the road --

14 MR. CURTIN: -- so that's -- at this point, I just --

15 THE COURT: -- wise to have a reserve.

16 MR. CURTIN: Right.

17 MR. KUSHNER: And there is a reserve. There still is  
18 a reserve.

19 THE COURT: An incremental reserve. I take the point,  
20 Mr. Kushner. I take the point, Mr. Curtin.

21 All right. I am -- this is the last matter we have in  
22 this case. Is that right? I would like a very short break.  
23 I'm going to think about this for a moment. I'll come back and  
24 give you a ruling. You can confer. If you work it out, so  
25 much the better.

1 Ms. Jackson can also use the opportunity to sequence  
2 as efficiently as possible how we're going to move through the  
3 next matters in the calendar to get you in and out as promptly  
4 as possible. All right. Thank you very much.

5 THE CLERK: All rise.

6 (Recess from 12:53 p.m. until 1:12 p.m.)

7 THE COURT: Thank you. Please be seated. Is there  
8 anything that anyone would like to add to the record with  
9 respect to the compensation issue as to Goetz Fitzpatrick? I  
10 take it the request from the debtor is that there'd be an  
11 approval at a level of a twenty percent holdback on fees and  
12 none on expenses. The request of the United States Trustee is  
13 for the reasons indicated including our proximity to  
14 confirmation and desirability of having a -- some kind of a bit  
15 of a funding reserve that the holdback be forty percent, not  
16 twenty percent. Is that -- have I correctly summarized the  
17 positions of the parties?

18 MR. CURTIN: Yes, Your Honor.

19 MR. KUSHNER: Yes, Your Honor.

20 THE COURT: Appreciating that this is a matter that is  
21 committed to the Court's sound discretion and that a  
22 decision is -- a decision that is a sensible decision is at  
23 least as important as continuing this to another hearing so  
24 that I can reflect further and review all the cases, I'm going  
25 to grant the application and provide for a thirty percent

1 holdback which not only is mid-point between your two positions  
2 but to me a sensible assessment of the merits of the arguments  
3 that you each make and -- so that's -- that's where we're going  
4 to end up.

5 All right. Please submit an appropriate proposed  
6 order and do we have a next date, Mr. Kushner, or do we need to  
7 find a next date?

8 MR. KUSHNER: Right. We need a new --

9 MR. CURTIN: Yes. Confirmation hearing.

10 THE COURT: I think we do. How far out in the future  
11 shall we look?

12 MR. KUSHNER: I think just the first week in May --

13 MR. CURTIN: That first week in May.

14 MR. KUSHNER: -- second week in May.

15 THE COURT: All right.

16 MR. CURTIN: Something between a week and two weeks,  
17 if you have, would be perfect.

18 THE COURT: Okay. First week of May, week of May 6th,  
19 first week of May depending on how you measure it could be as  
20 soon as May 2nd.

21 MR. KUSHNER: I have the 8th and 9th available. I  
22 don't know what Your Honor's availability and the 14th and 15th  
23 available.

24 THE COURT: I think the morning of the 9th should  
25 work. I think the morning of the 9th should work.

1 MR. KUSHNER: Thursday?

2 THE COURT: 9:30 on Thursday the 9th?

3 MR. CURTIN: May 9th at 9:30?

4 THE COURT: Yes.

5 MR. CURTIN: Yes.

6 MR. KUSHNER: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. KUSHNER: And Your Honor should be looking for the  
9 final disclosure statement and an order. So --

10 THE COURT: We shall look with great interest for  
11 those to be filed. Thank you very much.

12 MR. KUSHNER: Thank you.

13 THE COURT: Anything further? Thank you very much.

14 MR. KUSHNER: Thank you.

15 THE COURT: Thank you all.

16 (Whereupon these proceedings were concluded at 1:14 PM)

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C E R T I F I C A T I O N

I, Ellen S. Kolman, certify that the foregoing transcript is a true and accurate record of the proceedings.



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ELLEN S. KOLMAN

AAERT Certified Electronic Transcriber (CET\*\*D-568)

eScribers

700 West 192nd Street, Suite #607

New York, NY 10040

Date: June 5, 2013



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